



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2016-0751]

RIN 1625-AA00

Safety Zone; Port Huron Float-Down, St. Clair River, Port Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the St. Clair River in the vicinity of Port Huron, Michigan. Though this is an unsanctioned, non-permitted marine event, this action is necessary to provide for the safety of life on these navigable waters near Port Huron, MI, during a float down event on August 21, 2016. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Detroit or a designated representative.

DATES: This rule is effective from 12 p.m. through 8 p.m. on August 21, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0751 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Lieutenant Selena Warnke, Prevention Department, Sector Detroit, Coast Guard; telephone 313-568-9508, e-mail Selena.M.Warnke@uscg.mil.

If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

DHS	Department of Homeland Security
COTP	Captain of the Port
NAD 83	North American Datum of 1983
NPRM	Notice of Proposed Rulemaking

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice

and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details of this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect participants, mariners, and vessels from the hazards associated with this event. Furthermore, under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the Federal Register for the same reasons noted above.

During the afternoon of August 21, 2016, a non-sanctioned public event, advertised over various social-media sites, in which a large number of persons float down a segment of the St. Clair River, using inner tubes and other similar floatation devices is scheduled to take

place. The 2016 Float-Down event will occur between approximately 12 p.m. and 8 p.m. on August 21, 2016. This event has taken place in the month of August yearly from 2009 through 2015.

While no private or municipal entity has requested a marine event permit from the Coast Guard for this event, and although it has not received state or federal permits over these past years, the event has drawn over 3,000 participants of various ages annually. Despite plans put together by federal, state and local officials, emergency responders and law enforcement officials have been overburdened pursuing safety during this event. Medical emergencies, people drifting across the international border, and people trespassing on residential property when trying to get out of the water before the designated finish line are some of the numerous difficulties encountered during the Float-Down event.

During the 2014 Float-Down event, a 19-year-old participating in the event died. Despite this, promotional information for the event continues to be published, and more than 3,000 people are again anticipated to float down the river this year. However, since no public or private organization holds themselves responsible as the event sponsor, the Coast Guard does not receive full and final

details regarding the event or the number of participants until the time of the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231, 33 CFR 1.05-1 and 160.5; and Department of Homeland Security Delegation No. 0170.1. The Captain of the Port Detroit (COTP) has determined that the 2016 Float-Down poses significant risks to public safety and property. The likely combination of large numbers of participants, strong river currents, limited rescue resources, and difficult emergency response scenarios could easily result in serious injuries or fatalities to Float-Down participants and spectators.

IV. Discussion of the Rule

This rule establishes a safety zone from 12 p.m. through 8 p.m. on August 21, 2016. The safety zone will begin at Lighthouse Beach and encompass all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00'25"N; 082°25'20"W, extending east to the international boundary to a point at position 43°00'25"N; 082°25'02"W, following south along the international boundary to a point at position 42°54'30"N; 082°27'41"W, extending west to a point on land just north of Stag Island

at position 42°54'30"N; 082°27'58"W, and following north along the U.S. shoreline to the point of origin (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP or a designated representative. Vessel operators must contact the COTP or his on-scene representative to obtain permission to transit through this safety zone.

Additionally, no one under the age of 18 will be permitted to enter the safety zone if they are not wearing a Coast Guard-approved Personal Floatation Device (PFD). The COTP or his on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1

of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short duration, and it is designed to minimize the impact on navigation. Moreover, under certain conditions, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

As per the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, we have considered the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in this portion of southern Lake Huron and the St. Clair River near Port

Huron, MI on August 21, 2016, between the hours of 12 p.m. and 8 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the Regulatory Planning and Review section. Additionally, before the enforcement of the zone, Coast Guard Sector Detroit will issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

F. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be

received without jeopardizing the safety or security of people, places, or vessels.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

K. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

L. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

M. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

N. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and is therefore categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0751 to read as follows:

§ 165.T09-0751 Safety Zone; Port Huron Float-Down, St. Clair River, Port Huron, MI.

(a) Location. The following area is a temporary safety zone: all U.S. navigable waters of southern Lake Huron and the St. Clair River adjacent to Port Huron, MI, beginning at Lighthouse Beach and encompassing all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00'25"N; 082°25'20"W, extending east to the international boundary to a point at position 43°00'25"N; 082°25'02"W, following south along the international boundary to a point at position 42°54'30"N; 082°27'41"W, extending west to a point on land just north of Stag Island at position 42°54'30"N; 082°27'58"W, and following north along the U.S. shoreline to the point of origin (NAD 83).

(b) Enforcement period. The safety zone described in paragraph (a) of this section will be enforced from 12:00

p.m. to 8:00 p.m. on August 21, 2016.

(c) Regulations. (1) In accordance with the general regulations in §165.23, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit (COTP) or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted on a case-by-case basis by the COTP or his on-scene representative.

(3) Additionally, no one under the age of 18 will be permitted to enter the safety zone if they are not wearing a Coast Guard-approved Personal Floatation Device (PFD).

(4) The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the COTP to act on his behalf.

(5) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP or his on-scene representative to request permission to do so. The COTP or a designated representative may be contacted via VHF Channel 16 or at 313-568-9464. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or his on-scene representative.

Dated: August 16, 2016.

Scott B. Lemasters,
Captain, U. S. Coast Guard,
Captain of the Port Detroit.

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